IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No. 15 of 2006
In
OFFICIAL LIQUDATOR REPORT No. 76 of 2005
In
OFFICIAL LIQUDATOR REPORT No. 4 of 2005
With
CIVIL APPLICATION No. 54 of 2006
In
O.J.APPEAL No. 15 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANIDHARI INTERNATIONAL - Appellant(s)
Versus
O.L OF JALAN ISPAT CASTING LTD & 4 - Opponent(s)

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Appearance :
MR PRANAV G DESAI for Appellant(s) : 1, present
MR MA KUWADIA, OFFICIAL LIQUIDATOR

None for Opponent(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 13/03/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Admit. The Official Liquidator present in the court waives service of process of notice of admission on behalf of the respondent no.1. Respondent nos. 2 and 3 are Secured Creditors. In view of the order proposed to be passed, we do not think notices are required to be issued to the respondent nos. 2 to 5. Even otherwise, respondent nos. 2 to 5 have no stakes in the present matter.

2. The facts for disposal of the present appeal in nutshell are that certain properties of the company under liquidation were sought to be auctioned. There were bidders in different groups. The present appellant made the highest offer for group “B” and submitted the earnest money deposit. When the matter came up before the learned Company Judge for confirmation of the sale and acceptance of the offer made by the appellant, certain objections were raised and the learned Company Judge observed that the Official Valuer's report was not proper. The valuation was to be re-done and the

property was to be re-advertised for auction and only then, it could be sold. The appellant, though was initially aggrieved by this direction, but at this stage, Mr. Pranav G. Desai, learned counsel appearing for the appellant submitted that the appellant does not press that part of the relief.

3. According to Mr. Desai, learned Company Judge, while directing preparation of the fresh inventory and re-auction of the property, directed that the earnest money deposit paid by the appellant should be retained by the Official Liquidator. According to Mr. Desai, once the sale is not confirmed and there are no lapses on the part of the appellant, then, the appellant is entitled to refund of the earnest money deposit.

4. After hearing the parties, we must observe that the learned Company Judge, though was trying to protect the interest of the company under liquidation, at the same time, went little wrong in issuing direction that the earnest money deposited by the appellant be not refunded to it till fresh offers are received and the sale is made in pursuance to the fresh advertisement/offers.

5. It is trite law that that if an offer made by a group is not accepted and the same is turned down and

there are no lapses on the part of the offerer, then, the said offerer would be entitled to refund of money which he has given to the other side.

6. We hereby allow the appeal and direct the Official Liquidator to refund the earnest money to the appellant within 15 days from today. It is further clarified that as and when the property is put for auction, the appellant would be entitled to take part in the same. The appeal is allowed.

7. In view of the above order, no orders are required on O.J. Civil Application No.54/06.

[R.S. GARG, J.]

[BANKIM N. MEHTA, J.]

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